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PRELIMINARY STATEMENT

New evidence that has only recently become public strongly suggests that Plaintiff Andrea Tantaros herself had a role in fabricating at least one, and possibly two, of the so-called “sock puppet” accounts that her Complaint falsely asserts were used by the Defendants. This suggestion, if confirmed with limited and focused discovery, would establish yet another ground for granting the motion for sanctions filed by Defendants Fox News Network, LLC (“Fox News”) and Irena Briganti (together, “Fox News Defendants”). For that reason, the Fox News Defendants seek limited expedited discovery pursuant to Federal Rule of Civil Procedure 26(d) in further support of their pending Rule 11 motion.

The evidence of Tantaros’ machinations is contained in a printout of text messages exchanged by Tantaros and Michael Krechmer a/k/a Michael Malice, a writer she engaged to help write her book, between May 4, 2015 and December 23, 2015 (the “Text Log”).¹ The Text Log became public when Judge Forrest unsealed the file in a case that Krechmer brought when Tantaros allegedly refused to pay what she owed him under their contract. *See Krechmer v. Tantaros*, No. 16 Civ. 07820 (KBF) (S.D.N.Y. Aug. 10, 2017), ECF No. 53. Because the Text Log was initially filed under seal, the Fox News Defendants were not privy to its contents until August 22, six weeks after their Rule 11 motion was fully submitted.

The texts exchanged by Krechmer and Tantaros in the Text Log open a window into Tantaros’ competitive, often vicious accounts of her dealings with her then-colleagues at Fox News, as well as her attempts to deceive Fox News about the book she was planning to publish.

¹ A copy of the Text Log is annexed as Exhibit 1 to the accompanying Declaration of Benjamin M. Rose, dated October 6, 2017 (“Rose Declaration”). The texts from Tantaros are preceded by a “1” and the texts from Krechmer are preceded by a “2” in the first column of each row. The Text Log reproduces only the words exchanged in the text messages; it does not include any of the images that might have accompanied them.

But for present purposes, the critical point is that Tantaros and Krechmer traded messages about at least one of the sock puppet accounts—the @AveryDovven account—that Tantaros alleges was used by the Fox News Defendants “to emotionally manipulate her and damage her reputation on Twitter.” Compl. ¶ 43. Tantaros and Krechmer also appear to have discussed the @dycin55 account, another of the alleged sock puppets. The Text Log shows that these two Twitter accounts were *not* fake accounts that were stalking Tantaros, as alleged in paragraph 43(c) of the Complaint. Rather, they were fake accounts that *Tantaros appears to have created and used with the help of her friends*. Limited discovery from Twitter and from the persons who appear to have abetted Tantaros could confirm the evidence from the Text Log and provide further support for the pending Rule 11 motion. That discovery should be conducted now, before the Court rules on the pending Rule 11 motion. Otherwise, there is a risk that the brazen attempt by Tantaros, abetted by her former counsel Judd Burstein, to manipulate the judicial process and mislead this Court will go unpunished.

FACTUAL BACKGROUND

A. The Fox News Defendants’ Pending Rule 11 Motion Shows That One of the Alleged Sock Puppets Was a Real Account

In her Complaint, Tantaros baselessly asserts the Fox News Defendants tapped her phone and used the information learned from that illegal electronic surveillance “to emotionally manipulate her and damage her reputation on Twitter.” Compl. ¶ 43. The Complaint identifies four purported “sock puppet” accounts allegedly deployed in this scheme:

1. An account with a Twitter address of @DanielWayneBlo1, in the name of “Daniel Wayne Block.” Compl. ¶¶ 11, 46–64 & Exs. A, C–E, Y, AA–GG.
2. An account with a Twitter address of @realNASCARman, named “ANDREA TANTAROS FAN.” Compl. ¶¶ 21, 42 & Exs. T, Z.

3. An account with a Twitter address of @dycin55, named either “Desiree” or “Deena.” Compl. ¶ 43(a)–(c) & Exs. U–V.
4. An account with a Twitter address of @AveryDovven, named “Avery.” Compl. ¶ 43(c) & Ex. W.

The pending Rule 11 motion brought by the Fox News Defendants focuses on the first of these accounts, which is not a “sock puppet” at all, but an account created and exclusively used by a real person, Daniel Wayne Block. The Fox News Defendants demonstrated that Mr. Block had tweeted images purportedly based on Tantaros’ wiretapped phone conversations *before* those conversations allegedly occurred. *See* ECF No. 19 at 8–10 & nn.17–22. The Fox News Defendants also submitted an affidavit from Mr. Block in which he affirmed that he had no affiliation with Fox News and was personally responsible for generating all of the tweets in his Twitter account. *See* ECF No. 20-1. Forced to concede that Mr. Block was a real person who tweeted in his own name, Tantaros and her counsel doubled down on their bogus allegations by accusing the Fox News Defendants—without an iota of supporting evidence—of extorting or bribing Mr. Block to obtain the affidavit. *See* ECF No. 54 at 1, 5–13.

By contrast, the @realNASCARman, @dycin55 and @AveryDovven Twitter accounts appear on their face to be fake accounts. The Fox News Defendants’ pending Rule 11 motion does not address them, except to note that none of the tweets from those accounts described in the Complaint shows any sign of access to Tantaros’ allegedly wiretapped telephone conversations. *See* ECF No. 19 at 14. Indeed, the Complaint’s single paragraph about the @dycin55 and @AveryDovven Twitter accounts is confusing at best; the chief contentions are that the @AveryDovven account used Tantaros’ Twitter address in one of its tweets to make “sure that [the tweet] would be seen by Ms. Tantaros” and that the @dycin55 account acquired a new name and profile photo on August 24, 2015. Compl. ¶ 43(a)–(c).

B. The Text Messages Between Tantaros and Krechmer Suggest That Tantaros Directed the Creation of One or More of the Alleged Sock Puppet Accounts

The Text Log shows that Tantaros was obsessed with social media, paying close attention to who followed her Twitter account, to who followed the accounts of her colleagues at Fox News, and to who retweeted whom.² Tantaros fixated in particular upon an unidentified “fake Twitter account”—which does not appear to be one of the accounts identified in the Complaint—that she believed had been “stocking [sic] me and Inga just started following Dave too.” Ex. 1 at 17 (8/3/2015 text at 9:53 a.m.). “Inga” is Inga Lee Norton, a friend of Tantaros, and “Dave” is Dave Navarro, a musician who had been rumored to be romantically involved with Tantaros.³

In August 2015, Krechmer proposed a way of entrapping the “stalker” by posting tweets that the stalker would mimic:

Krechmer: you need a shot of you buying grape leaves or some other greek food at a specific store

Krechmer: want to see what her low-rent interpretation would be, or if she actually goes to the same place

Krechmer: launched in may 2014, followed you immediately. dave this August

Tantaros: I want to call them out so badly

Ex. 1 at 24 (8/23/2015 text at 12:31 pm to 8/24/2015 text at 3:49 p.m.).

² For example, on August 9, 2015 Tantaros and Krechmer shared the following exchange:

Tantaros: So remember when you emailed me that The ant eater started following skulking? Well it looks like he started following her and Kimberly back knowing that they are my enemies.

Krechmer: that is super shitty

Ex. 1 at 19 (8/9/2015 texts from 2:37 p.m. to 2:38 p.m.). The exact identities of “skulking” and “ant eater” are unclear, although they appear to be two of Tantaros’ former colleagues at Fox News, as was “Kimberly” Guilfoyle.

³ See, e.g., *This just in! Rocker Dave Navarro, 47, is Dating Fox News Anchor Andrea Tantaros*, 36 . . . *After Meeting Through Mutual Friends*, DAILY MAIL, Apr. 27, 2015, <http://www.dailymail.co.uk/tvshowbiz/article-3058419/Dave-Navarro-47-dating-Fox-News-anchor-Andrea-Tantaros-36-meeting-mutual-friends.html>.

The cat-and-mouse game that Tantaros and Krechmer plotted appears to have been played out through two of the sock puppet accounts alleged in the Complaint—the @AveryDovven and @dycin55 Twitter accounts. In other words, the @AveryDovven and @dycin55 Twitter accounts that Tantaros accuses the Fox News Defendants of using were created and/or used *by Tantaros herself*. In one series of texts, Tantaros told Krechmer that her friend Inga had started to use the @AveryDovven account:

Krechmer: now that I think about it, that's very sweet and considerate of inga.

Tantaros: She is the greatest

Tantaros: *AveryDovven is now her*

Krechmer: same model

Tantaros: *Switched her entire profile*

Tantaros: Same tweets but *deleted ones about me and dave*

Id. (8/24/2015 text at 7:39 p.m. to 8/25/2015 text at 12:26:46 a.m.) (emphasis added). These texts necessarily imply that Tantaros herself was controlling the @AveryDovven account, either directly or through her friend Inga, because only a Twitter account owner (or someone who has the account owner's password) can change an account profile or delete a tweet posted by that account.⁴

Similarly, the Text Log raises a strong inference that Tantaros created or used the @dycin55 sock puppet account. In her Amended Complaint, Tantaros alleges that:

On August 24, 2015, Ms. Tantaros received a Tweet from 'Desiree,' with the Twitter address of @dycin55, stating that she 'can't wait to see my Greek goddess on the TV at noon.'

⁴ See Twitter Help Center: Customizing your profile, <https://support.twitter.com/articles/127871> (user must be signed in to his or her own Twitter account to change its profile); Twitter Help Center: Deleting a Tweet, <https://support.twitter.com/articles/18906> ("Please note that you can only delete Tweets you have posted, you cannot delete other accounts' Tweets from your timeline.").

The next day, August 25, 2015, the @dycin55 Twitter account now had a different name ('Deena') and picture associated with it. . . .

Ms. Tantaros performed a reverse Google image search of @dycin55's initial avatar. The woman was not named Desiree. The picture was a real person whose image was being used is a professional model by the name of Adriana Christina.

Compl. ¶ 43(a)–(c) (citations omitted). The Text Log shows that on that very same day—August 24, 2015—Tantaros sent Krechmer information about an unnamed fake Twitter account that featured a photo of a “different model” from the one used for the @AveryDovven account:

Tantaros: Diff[erent] model – the account i sent today is the other model

Ex. 1 at 24 (8/25/2015 tweet at 12:26:58 a.m.). It cannot be a coincidence that the @dycin55 Twitter account described in the Complaint both (i) used the photo of a professional model in its profile and (ii) revised that profile on August 24, 2015, the very same day that Tantaros sent a Twitter account featuring a professional model to Krechmer. The obvious inferences are that the account Tantaros sent to Krechmer is the @dycin55 Twitter account and that the @dycin55 Twitter account was yet another sock puppet *created by Tantaros, not by any of the Fox News Defendants.*

Judd Burstein, the attorney who signed Tantaros' Complaint in this action, also represented Tantaros in *Krechmer v. Tantaros*. He was served with the Text Log in the *Krechmer* case five months before he signed the Complaint in this case. *See Krechmer v. Tantaros*, No. 16 Civ. 07820 (KBF) (S.D.N.Y.), ECF No. 106 ¶ 16 (attorney declaration dated Nov. 4, 2016 identifying text log). Burstein thus knew or was reckless in failing to ascertain that Tantaros herself had a role in creating or using the @AveryDovven and @dycin55 accounts.

C. The Requested Discovery

Limited discovery from Twitter, from Krechmer and from Inga Lee Norton is needed to confirm that Tantaros herself created or used—or was involved in creating or using—the “sock puppet” @AveryDovven and @dycin55 accounts that she has falsely accused the Fox News Defendants of creating. The Fox News Defendants seek the following subpoenas:

- A subpoena to Twitter seeking documents about the creation of, and activity in, the @AveryDovven and @dycin55 accounts
- A subpoena to Michael Krechmer a/k/a Michael Malice seeking his documents and testimony about the @AveryDovven and @dycin55 Twitter accounts, and his own role in such accounts.
- A subpoena to Inga Lee Norton seeking her documents and testimony about the @AveryDovven and @dycin55 Twitter accounts, and her own role in such accounts.

In addition, should the Court grant discovery on their pending Rule 11 motion, the Fox News Defendants also seek to take the deposition of Daniel Wayne Block, so as to refute Tantaros’ desperate allegation that he perjured himself in his affidavit. Forms of the requested subpoenas are attached as Exhibits 2–5 to the Rose Declaration.

ARGUMENT

I. The Conduct Revealed In the Text Log Presents Extraordinary Circumstances Warranting Expedited Discovery In Support of the Sanctions Motion

Ordinarily, “the record in the case, and the surrounding circumstances afford the court an adequate basis to determine whether sanctions are necessary.” *See Indianapolis Colts v. Mayor & City Council of Baltimore*, 775 F.2d 177, 183 (7th Cir. 1985) (citing Advisory Committee Notes). But discovery in support of motions for Rule 11 sanctions is permitted in extraordinary circumstances. *See Fed. R. Civ. P. 11 Advisory Comm. Notes*. This burden is satisfied where the party seeking sanctions has raised serious concerns about whether allegations are supported by sufficient evidentiary support, and the requests are narrowly tailored to information relevant

to the moving party's defenses. *See In re Digitek Prod. Liab. Litig.*, MDL No. 1968, Doc. No. 39 at 7-14 (S.D.W. Va. Aug. 28, 2009) (finding discovery requests tailored to plaintiffs' lack of evidentiary support was warranted at the outset of the Rule 11 process);⁵ *see also Byrne v. Nezhat*, 261 F.3d 1075, 1116 n.82 (11th Cir. 2001) (district court did not abuse its discretion in permitting Rule 11 discovery at the outset of the case).

Extraordinary circumstances warranting Rule 11 discovery are present here. The Text Log strongly suggests that Tantaros created (or directed the creation of) the @AveryDovven and @dycin55 sock puppet accounts that she has falsely accused the Fox News Defendants of creating to stalk and intimidate her. This conduct provides additional, potential grounds warranting sanctions. Although much of the sanctionable conduct committed by Tantaros and Burstein is readily apparent, as outlined in the pending Rule 11 motion, the Text Log raises additional grounds for sanctions that cannot be determined on the present record. Moreover, the Fox News Defendants' requests are narrowly tailored to address only documents and deposition questioning related to the extent of Tantaros' creation and manipulation of the sock puppet accounts that she has falsely accused the Fox News Defendants of creating. Accordingly, the requested Rule 11 discovery is appropriate here.

II. There Is Good Cause for the Fox News Defendants' Limited, Expedited Rule 11 Discovery

Federal Rule of Civil Procedure 26(d) provides that discovery may be conducted before a Rule 26(f) conference with the Court's permission. The Court has broad latitude in authorizing discovery on an expedited basis where the movant meets the "flexible standard of reasonableness and good cause." *See Ayyash v. Bank al-Madina*, 233 F.R.D. 325, 327 (S.D.N.Y. 2005) (granting expedited discovery where discovery was reasonable and supported by good cause);

⁵ A copy of this order is annexed as Exhibit 6 to the accompanying Rose Declaration.

Benham Jewelry Corp. v. Aron Basha Corp., No. 97 Civ. 3841, 1997 WL 639037, at *20 (S.D.N.Y. Oct. 14, 1997) (same).

Good cause is present because, as demonstrated in the Fox News Defendants’ pending motion to compel arbitration, the merits of Tantaros’ claim will likely be determined by a panel of AAA arbitrators, not by this Court. If the inferences drawn above from the Text Log are correct, Tantaros and Burstein have falsely accused the Fox News Defendants of tormenting Tantaros with sock puppet accounts that *she herself created and used*—truly egregious behavior that deserves the harshest possible sanction available to the Court. Yet if the Rule 11 motion is decided before the Fox News Defendants have an opportunity to investigate the facts and the case is then dismissed in favor of arbitration, the misconduct of Tantaros and her counsel with respect to those false accusations will go unpunished. Prevention of that injustice is “good cause” warranting discovery at this juncture.

CONCLUSION

For the foregoing reasons, the Fox News Defendants respectfully request that the Court permit expedited discovery on their Rule 11 motion for sanctions in the form of subpoenas to Twitter, Inc., Michael Krechmer a/k/a Michael Malice, Inga Lee Norton and Daniel Wayne Block.

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